U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEE A. BLACK and DEPARTMENT OF HOUSING & URBAN DEVELOPMENT, OFFICE OF FAIR HOUSING & EQUAL OPPORTUNITY, Washington, DC

Docket No. 98-1258; Submitted on the Record;
Issued October 1, 1999

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's requests for reconsideration; and (2) whether the Office properly denied appellant's request for a hearing.

On October 27, 1995 appellant, then 56-year-old former employment opportunity specialist, filed a claim for compensation for emotional distress which he related to the denial of his compensation claims and termination of his compensation benefits and harassment for seeking a schedule award.[1] On January 24, 1996 appellant submitted another claim for compensation which contained numerous references to letters and medical reports he had submitted previously or was submitting. In a July 23, 1996 decision, the Office rejected appellant's claim on the grounds that the evidence of record did not establish that he sustained an injury in the performance of duty.

In an August 22, 1996 letter, appellant requested a hearing before an Office hearing representative. In a subsequent undated letter, appellant requested a review of the written record in lieu of a hearing before an Office hearing representative. In a January 3, 1997 decision, an Office hearing representative found that appellant was claiming that he had sustained an

[1] Appellant sustained an employment injury on April 2, 1978 when his car was struck by another car. He was injured on April 5, 1979 when he slipped on a waxed floor and fell. The Office accepted appellant's claim for cervical and lumbar sprains. The Office terminated appellant's compensation effective July 30, 1989 on the grounds that his employment-related disability had ceased. In a December 24, 1991 decision, the Board found that the Office met its burden of proof in terminating appellant's compensation. The Board, however, found that subsequent medical reports raised the issue of whether appellant was able to perform the physical requirements of his former position and therefore remanded the case for clarification of this issue. Docket No. 91-1194 (issued December 24, 1991). In a September 9, 1996 decision, the Board found that appellant did not have any disability after July 30, 1989. Docket No. 94-1972 (issued September 9, 1996). The history of the case is contained in the prior decisions and is incorporated by reference.

emotional condition due to abusive and erroneous actions in the processing of his claims for compensation by the Office and by the employing establishment. The hearing representative stated, however, that such claims were not compensable because the processing of a compensation claim by the Office or the employing establishment did not arise within appellant's performance of duty because the handling of a compensation claim was not related to appellant's assigned duties.

In a January 10, 1997 letter, appellant stated that he wanted to appeal the January 3, 1997 decision to the Board. However, in a January 12, 1997 letter, he canceled his request for an appeal and requested reconsideration. In a January 17, 1997 letter, appellant withdrew his request for reconsideration and requested a hearing. In an April 9, 1997 decision, the Office found appellant was not entitled to a hearing, as a matter of right, because he had previously received a review of the written record by an Office hearing representative. The Office reviewed appellants' request on its own discretion and denied his request for a hearing on the grounds that the issue in his case could be equally well addressed by submitting evidence not previously considered which established that his medical condition arose out of the performance of duty of his position.

In an April 10, 1997 letter, appellant requested reconsideration. In a July 30, 1997 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was repetitious and cumulative and therefore insufficient to warrant review of its prior decision. In an August 18, 1997 letter, appellant again requested reconsideration. In a December 9, 1997 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious, cumulative and immaterial and therefore insufficient to warrant review of its prior decisions. In a December 17, 1997 letter, appellant submitted another request for reconsideration. In a February 18, 1998 decision, the Office denied appellants' request for reconsideration on the grounds that the evidence submitted in support of the request was repetitious, cumulative and immaterial and therefore insufficient to warrant review of its prior decisions.

The jurisdiction of the Board is limited to final decisions of the Office issued within one year prior to the docketing of an appeal with the Board.[2] As appellant's appeal was docketed on March 9, 1998, the Board has jurisdiction only over the Office's April 9, 1997 decision denying appellant's request for a hearing and the July 30, December 9, 1997 and February 18, 1998 decisions denying appellant's requests for reconsideration.

The Board finds that the Office did not abuse its discretion in denying appellant a hearing before an Office hearing representative.

The Board has held that, under section 8124(b) of the Federal Employees' Compensation Act[3] a claimant is not entitled to a second hearing on the same issue before the Office.[4] The

[2] 20 C.F.R. § 501.3(d)(2).

[3] 5 U.S.C. § 8124(b).

[4] *Johnny S. Henderson*, 34 ECAB 216, (1982).

Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and the Office must exercise this discretionary authority in deciding whether to grant a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing, when the request is made after the 30-day period established for requesting a hearing, or when the request is for a second hearing on the same issue. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.[5] The Office exercised its discretion in this case and found that appellant could have his claim for an emotional condition equally well addressed by submitting new evidence and requesting reconsideration. As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.[6] There is no evidence that the Office abused its discretion in appellant's case.

The Board further finds that the Office did not abuse its discretion in denying appellant's requests for reconsideration.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.[7] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[8] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[9]

In his requests for reconsideration, appellant submitted voluminous statements, reports, copies of memorandum and other information that he had submitted previously, particularly with regard to his contention that an Office claims examiner, in a memorandum, had called a medical report submitted by appellant "BS," referred to appellant as a "clown" and repeated a statement that there might be an element a fraud in appellant's claim. The bulk of the evidence and information submitted by appellant had been submitted previously to the Office prior to its July 30, 1996 decision and to the Office hearing representative prior to his January 3, 1997 decision. The evidence submitted in support of the requests for reconsideration therefore was

[5] *Henry Moreno*, 39 ECAB 475 (1988).

[6] *Daniel J. Perea*, 42 ECAB 214 (1990).

[7] 20 C.F.R. § 10.138(b)(2).

[8] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[9] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

repetitious or duplicative of evidence already submitted and therefore was insufficient to require a merit review of the evidence by the Office.

In a May 20, 1997 letter appellant submitted new material to accompany his April 10, 1997 request for reconsideration, alleging other factors of employment which he contended caused his emotional condition. He cited factors such as being sent on detail assignments, restrictions on travel, a reprimand for use of travel, a denial of a request for promotion due to injury-related absence from his job, denial of extended leave without pay and continuation of pay, and actions which he contended led to the loss of health and retirement benefits. Appellant's claim on these matters, however, has no color of validity and therefore is insufficient to require merit review of his claim.[10] Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes with the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[11] When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.[12] In these cases the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[13] All the factors cited by appellant were administrative actions by the employing establishment unrelated to his assigned duties. These factors are not considered to be compensable factors of employment unless there is evidence of error or abuse by the employing establishment. Although appellant has made general allegations of error and abuse by the employing establishment in these factors, there is no evidence of record which would show that the actions of the employing establishment were taken in error or were abusive. Appellant's new allegations, therefore, do not have sufficient legal basis to require a further merit review of his claim for an emotional condition.

[10] *Constance G. Mills*, 40 ECAB 317.

[11] *Lillian Cutler*, 28 ECAB 125 (1976).

[12] *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

[13] *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

The decisions of the Office of Workers' Compensation Programs, dated February 18, 1998, December 9, July 30 and April 9, 1997, are hereby affirmed.

Dated, Washington, D.C.
October 1, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member